

S T A T E   R E P O R T E R  
O F  
E D U C A T I O N   L A W  
VOLUME 7

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION OF THE STATE OF MONTANA :

DONNA L. EAKMAN,

Appellant,

v.

**No. OSPI 154-88**

Decided: Dec. 29, 1988

TRUSTEES, CASCADE COUNTY SCHOOL  
DISTRICT NO. 1 AND A,

Respondent.

Appeal from the Cascade County Superintendent of Schools.

Findings of Fact, Conclusions of Law and Order by Ed Argenbright,  
State Superintendent.

TEACHERS--TENURE, Whether terminated teacher **was** tenure or non-tenure  
at the time of her termination.

This is an appeal of the May 26, 1988 decision of the Cascade County Superintendent of Schools, Tsugio Ikeda. **The appeal is** by terminated teacher, Donna L. Eakman. Pursuant to notice, the parties have submitted briefs and participated in oral argument. The sole issue is the status of Ms. Eakman at the time of her termination, i.e., whether she was tenure or non-tenure, and based on that determination, whether or not the District and County Superintendents correctly applied the proper statute. Based on the standard of review established for these proceedings set forth in 10.6.125, A.R.M. and the case law established, this State Superintendent finds substantial credible evidence in the record to support the findings of the Cascade County Superintendent, which are herein adopted and fully set forth below:

#### FINDINGS OF FACT

1. Donna Eakman is a teacher of the Respondent. Respondent is the duly elected governing body of Cascade County School District No. 1 and A, a body corporate school district with principal offices in Great Falls, Cascade County, Montana. The School District is a political subdivision of the State of Montana. Respondent operates the Great Falls, Montana Public Schools.

2. On April 15, 1988, Petitioner signed a Notice of Appeal stating that she wished to appeal Respondent's decision of April 11, 1988 to terminate her current teaching contract. The County Superintendent received this Notice on April 20, 1988.

3. On May 6, 1988, Respondent filed a Motion for Dismissal or, in the alternative, for Summary Judgment.

4. Respondent held a hearing on April 11, 1988 and voted to terminate the Petitioner's teaching contract.

5. Petitioner contends that at the time of that decision she was a tenured teacher and that the County Superintendent has jurisdiction to decide if the Respondent's action was in violation of Section 20-4-205 (1), MCA. Respondent disagrees with both contentions.

Based on the foregoing Findings of Fact, this State Superintendent draws these:

#### CONCLUSIONS OF LAW

1. This is a contested case before the State Superintendent of Public Instruction. Jurisdiction is in the State Superintendent of Public Instruction pursuant to Sections 20-3-107 and 20-3-210, MCA. Respondent's Proposed Conclusions of Law 3-16 are herein adopted by this State Superintendent and are fully set forth below.

2. All statutory procedural requirements have been met by the parties. This State Superintendent is using the standard of review set forth in Section 10.6.125, A.R.M.

3. The County Superintendent's May 26, 1988, decision found, in part, that:

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"1. [Appellant] . . . is not a tenured teacher: her tenured employment was terminated effective in June, 1987. The County Superintendent so decided by its Order of July 14, 1987. Petitioner has not regained tenure despite the fact that she was hired in the Fall of 1987: her contract for 1987-88 does not satisfy MCA Section 20-4-203 in regards to tenure.

"2. [Appellant] . . ., being a non-tenured teacher, does not have statutory appeal rights. MCA Section 20-4-206 and Bridger Education Association v. Board of Trustees, 678 P.2d 659, 41 St. Rep. 533 (1984) [3 Ed Law 99].

"3. The County Superintendent does not have jurisdiction in this case. (Conclusions of Law, subparagraph A)."

4. Section 20-4-203, MCA, Teacher Tenure, states:

"Whenever a teacher has been elected by the offer and acceptance of a contract for the fourth consecutive year of employment by a district --- the teacher shall be deemed to be re-elected from year to year thereafter as a tenured teacher --- unless the Trustees resolve by a majority vote of the membership to terminate the services of the teacher in accordance with the provisions of 20-4-204."

This statute refers to the offer and acceptance of a "contract for the fourth consecutive year of employment."

5. The County Superintendent properly found that Appellant's " . . . contract for 1987-88 does not satisfy MCA Section 20-4-203 in regards to tenure." Appellant was not employed for a year of employment as statutorily required. Appellant was contracted for one hundred eighty-one (181) days while the school year totaled one hundred ninety (190). The nine (9) days Appellant was deficient cannot be discounted as worthless or unimportant. Appellant was not tenured in 1988.

6. The County Superintendent found, in the alternative, that even if jurisdiction were to exist and Appellant had tenure, that Section 20-4-204, MCA governs and that Appellant was properly terminated.

7. The County Superintendent also found, in the alternative, that school boards have until May 1 of the current school year to notify a tenured teacher of a termination recommendation and to hold a hearing on such termination pursuant to Section 20-4-204, MCA. (Conclusions of Law, B. Summary Judgment) . The County Superintendent found that Respondent's April 11, 1988 hearing and decision to terminate Appellant's teaching contract **was** timely and in accordance with Montana law. If Appellant were a tenured teacher, she was legally terminated.

8. If Appellant were a tenured teacher, Section 20-4-204, MCA governs her termination.

9. Trustees have until May 1st of the current school fiscal year

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to notify a tenured teacher of a termination recommendation and to hold a hearing on such termination. See Section 20-4-204, MCA.

10. The April 1st reference in Section 20-4-205, MCA does not control. April 1st is a date that refers to notice or re-election, not termination. The Legislature could have inserted "April 1st" in the second sentence of 20-4-205 (1); it did not. See 1987 Montana House and Senate Committee Minutes of House Bill 356.

11. A statute must be interpreted according to the plain meaning of its terms. See *Burritt v. City of Butte*, 161 Mont. 530 at p. 534, 508 P.2d 563 (1973). See also *Dunphy v. Anaconda Company*, 151 Mont. 76, 438 P.2d 660 (1968) .

12. The purpose of House Bill 356 was to extend the time deadline to give trustees more time past April 1st to decide whether to reduce teaching staff because of budgets. See Minutes of House Bill 356.

13. Even if Section 20-4-204 and 205 were in conflict, Section 20-4-204 would control because it is more specific. See Section 1-2-102, NCA. To follow Appellant's argument would give Section 20-4-204 no effect. The Legislature is presumed not to pass meaningless legislation.

14. This State Superintendent affirms and adopts the County Superintendent's Findings of Fact and Conclusions of Law in their entirety.

15. The County Superintendent correctly found that Appellant was lawfully terminated.

16. This State Superintendent has considered all issues raised by the parties in this matter and has considered all proposed Findings of Fact and Conclusions of Law. Those not specifically incorporated herein are specifically denied.

From the foregoing Findings of Fact and Conclusions of Law, this State Superintendent now issues this:

ORDER

1. That the May 26, 1988 order of the Cascade County Superintendent of May 26, 1988 is hereby affirmed.

IT IS SO ORDERED.

DATED this 29th day of December, 1988.

s/Ed Argenbright  
State Superintendent